BEFORE THE ARIZONA CORPORATION COMMISSION

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In the matter of:

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COMMISSIONERS

MIKE GLEASON, Chairman WILLIAM A. MUNDELL JEFF HATCH-MILLER KRISTIN K. MAYES GARY PIERCE

DOCKET NO. S-20635A-08-0523

MARK A. WESTERFIELD (CRD#4234248))
and VICTORIA H. WESTERFIELD,
husband and wife, formerly doing business as)
Builder's Secret, an expired Arizona
registered trade name,

Respondent.

NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES, AND FOR OTHER AFFIRMATIVE ACTION

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent MARK A. WESTERFIELD has engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENT

2. MARK A. WESTERFIELD ("Respondent") is an individual who, at all times

relevant, resided in Pima County, Arizona.

Arizona Corporation Commission
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3. VICTORIA H. WESTERFIELD ("Respondent Spouse") was, at all times relevant, the spouse of Respondent. Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

4. At all times relevant, Respondent was acting for Respondent's own benefit and for the benefit or in furtherance of Respondent and Respondent Spouse's marital community.

III.

FACTS

- 5. Builder's Secret is an expired, Arizona registered trade name. At all times relevant, Respondent and Respondent's Spouse were the agents/owners of and doing business as this trade name.
- 6. EXPERT INSTALL, INC. is an Arizona corporation that is doing and, at all times relevant, did business as MV Security (EXPERT INSTALL, INC. shall hereinafter be referred to as "MV SECURITY"). MV SECURITY is the holder of a dual (i.e., residential and commercial), "Shutters and Blinds" license (number ROC238572; classification K-05) issued by the Arizona Registrar of Contractors (the "ROC License").
- 7. Respondent is and was at all times relevant the vice president and shareholder of MV SECURITY. In these capacities, Respondent obtained and maintained the ROC License and he opened and has signature authority over the bank account of MV SECURITY.
- 8. Respondent is a previously registered securities salesman (CRD#4234248) who, at all times relevant, was not affiliated with a registered securities dealer. Respondent was affiliated with World Group Securities, Inc. (formerly known as WMA Securities, Inc.) ("WMA"), an Arizona registered securities dealer, from July 17, 2000 until his termination on November 11, 2002 for "failure to remain active."
- 9. On several occasions in 2003 in Tucson, Arizona, Respondent met with an investor (the "Investor") regarding the Investor's investment portfolio. During these meetings, Respondent represented himself to be a financial planner associated with WMA.

- 10. At a meeting on September 23, 2003, Respondent discussed with the Investor and sold him an investment contract that Respondent called the "public offering" of Builder's Secret (the "Investment"). Respondent said that Builder's Secret "specialized in building materials."
- 11. The Investor told Respondent two or three times that the money he had to invest was his entire life's savings and that, since he was a student with limited income and a child on the way, the money could not be risked in any way.
- 12. Respondent provided the Investor with a WMA form signed by Respondent entitled "New Account Application" containing a section entitled "Client Investment Objective" with boxes describing various levels of risk tolerance. Respondent marked the box entitled "Preservation of Capital," the lowest level of risk tolerance.
- 13. Respondent assured the Investor that the Investment was guaranteed because Builder's Secret held enough "liquid inventory" to "back their investors" and, if necessary, Builder's Secret could and would liquidate "inventory in stock" to pay the Investment principal and interest/return.
- 14. Respondent provided the Investor with a document entitled "Investment offering" containing a section entitled "Assurance" that stated, "All funds must be matched with liquid inventory at all times. Investors have assurance of full principle and interest..."
- 15. Respondent did not disclose specifically how the Investor's money would be used, but generally represented that it would be used by Builder's Secret to purchase building materials, the type of which that could/would be used to secure the Investment.
- 16. Respondent neither filed a UCC financing statement with the Arizona Secretary of State nor added the Investor to the title of any property (inventory, building materials, or otherwise) to secure the Investment.
- 17. Respondent represented that, so long as the Investor kept the Investment in for the entire, two-year term and did not withdraw it early, he would receive a 7% annual return.

18.	Respondent did not disclose specifically how Builder's Secret would generate the
guaranteed	return on the Investment, but generally represented that it would be the result of the
profitable o	perations of Builder's Secret.

- 19. At the direction of Respondent, the Investor paid \$10,000 for the Investment with a check payable to MV SECURITY, not Builder's Secret, WMA, or Respondent. The Investor's money was deposited into the bank account of and spent by MV SECURITY.
- 20. Respondent represented that, even though the Investment could be renewed upon the expiration of the two-year term, the Investor could request and then would receive payment of the Investment principal and interest/return.
- 21. On or about December 2006, after the expiration of the 2-year term of the Investment, the Investor contacted Respondent and requested to receive the Investment principal and interest/return. Although Respondent promised to send it to the Investor via Federal Express, the Investor has not received any money.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

- 22. From on or about September 23, 2003, Respondent offered or sold securities in the form of an investment contract, within or from Arizona.
- 23. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.
 - 24. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

25. Respondent offered or sold securities within or from Arizona while not registered as a dealer or salesman pursuant to Article 9 of the Securities Act.

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26. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

- 27. In connection with the offer or sale of securities within or from Arizona, Respondent directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondent's conduct includes, but is not limited to, the following:
- a) Misrepresenting himself to be associated with WMA and using a WMA New Account Application in connection with the Investment when, at the time of the Investment, Respondent was terminated from WMA;
- b) Misrepresenting to the Investor that Builder's Secret had/would have sufficient inventory and/or building materials to pay the Investment principal and interest/return;
- c) Misrepresenting to the Investor that, upon the expiration of the two-year term of the Investment, he could request and then would receive payment of the Investment principal and interest/return; and,
- d) Failing to provide the Investor with specific information about how his money would be used or how Builder's Secret would generate the guaranteed return on the Investment.
 - 28. This conduct violates A.R.S. § 44-1991.

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VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

- 1. Order Respondent to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;
- 2. Order Respondent to take affirmative action to correct the conditions resulting from Respondent's acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
- 3. Order Respondent to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
- 4. Order that the marital community of Respondent and Respondent Spouse be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and,
 - 5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

Each respondent, including Respondent Spouse, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. If Respondent or Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice. A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at http://www.azcc.gov/divisions/hearings/docket.asp.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the

parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, ADA Coordinator, voice phone number 602/542-3931, e-mail lhogan@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

IX.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if Respondent or Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at http://www.azcc.gov/divisions/hearings/docket.asp.

Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Aaron S. Ludwig.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 10th day of October 2008.

Mark Dinell

Assistant Director of Securities